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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,738	01/25/2002	Thomas Ward Humphrey	IBM / 215	9917
26517	7590	06/30/2005		
WOOD, HERRON & EVANS, L.L.P. (IBM) 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202				
			EXAMINER MEHRPOUR, NAGHMEH	
			ART UNIT 2686	PAPER NUMBER

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/056,738

Applicant(s)

THOMAS WARD HUMPHERY

Examiner

Naghmeh Mehrpour

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2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 1-15**, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of Dettinger (U.S. Publication 2003/0143954 A1) in view of Westerhuis (EP Publication EP 0957619 A1).

Regarding **claim 1**, Dettinger teaches a method of controlling the response of a wireless communication device (claim 1) comprising the following steps:

providing a first wireless communication device capable of audibly responding (claim 1);  
networking said first device with a second wireless device (claim 1);

Dettinger fails to teach a method wherein first devices networking with the number of wireless devices, sampling the sound pressure level through a microphone used by the first device; and

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selecting to modifying the audible response of the first device based on a count of other networked devices and the sampled sound pressure level. However Westerhuis teaches a method wherein first devices networking with the number of wireless devices (col 5 section 0028), sampling the sound pressure level through a microphone used by the first device (col 5 lines 15-29); and

selecting to modifying the audible response of the first device based on a count of other networked devices (col 5 lines 29-31) and the sampled sound pressure level (col 5 lines 15-21). Magnetic strip senses in the neighborhood of the number of portable terminal, and when the call comes activates the newly selected notification type and deactivates of a formally active notification, the notification type control device CTRL-2 deactivates the light emitting diode LED2 and activates the speaker (col 7 section 0036). Therefore, it would have been obvious to ordinary skill in the art at the time the invention is made to combine the above teaching with Dettinger, in order to use of the digital radio bandwidth to broadcast multiple content on a single station.

Regarding **claims 6, 11**, Dettinger teaches an audible response,

a microphone, and storage for executable code, the processor executing the executable code to allow a provider to input threshold parameters (claim 8).

Dettinger fails to teach a wireless communication device/program product, communication device operates by software; therefore, it reads a product program comprising:

network the device with other wireless devices a processor executing the executable code to allow a provider to input threshold parameters, network the device with other wireless devices,

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sample the sound pressure level through the microphone, make comparisons between the threshold parameters and a count of other devices networked with the devices, and the sampled sound pressure level, and modify audible response of wireless communication device based on the comparison. However, Westerhuis teaches a method wherein network the device with other wireless devices (col 5 section 0028), a processor executing the executable code to allow a provider to input threshold parameters, network the device with other wireless devices sample the sound pressure level through the microphone (col 5 lines 15-29); and and modify audible response of wireless communication device based on the comparison (col 6 section 0033, col 7 section 0036) selecting to modifying the audible response of the first device based on a count of other networked devices (col 5 lines 29-31) and the sampled sound pressure level (col 5 lines 15-21). Magnetic strip senses in the neighborhood of the number of portable terminal, and when the call comes activates the newly selected notification type and deactivates of a formally active notification, the notification type control device CTRL-2 deactivates the light emitting diode LED2 and activates the speaker (col 7 section 0036). Therefore, it would have been obvious to ordinary skill in the art at the time the invention is made to combine the above teaching with Dettinger, in order to use of the digital radio bandwidth to broadcast multiple content on a single station.

### ***Response to Arguments***

3. Applicant's arguments filed 3/23/05 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

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teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dettinger disclose a method of controlling the response of a wireless communication device (claim 1) comprising the following steps of providing a first wireless communication device capable of audibly responding (claim 1); networking said first device with a second wireless device (claim 1). Dettinger fails to teach a method wherein first devices networking with the number of wireless devices, sampling the sound pressure level through a microphone used by the first device; and selecting to modifying the audible response of the first device based on a count of other networked devices and the sampled sound pressure level. However, Westerhuis teaches a method wherein first devices networking with the number of wireless devices (col 5 section 0028), sampling the sound pressure level through a microphone used by the first device (col 5 lines 15-29); and selecting to modifying the audible response of the first device based on a count of other networked devices (col 5 lines 29-31) and the sampled sound pressure level (col 5 lines 15-21). Magnetic strip senses in the neighborhood of the number of portable terminal, and when the call comes activates the newly selected notification type and deactivates of a formally active notification, the notification type control device CTRL-2 deactivates the light emitting diode LED2 and activates the speaker (col 7 section 0036). Therefore, by combing the above teaching with Dettinger, using the digital radio bandwidth to broadcast multiple content on a single station.

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### **Conclusion**

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. **Any responses to this action should be mailed to:**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naghmeh Mehrpour whose telephone number is 571-272-7913. The examiner can normally be reached on 8:00- 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold be reached (571) 272-7905.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NM

June 27, 2005



MELODY MENEPOUR  
PATENT EXAMINER